FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Complaint of	}	
	}	
Democratic Senatorial Campaign Committee	}	MUR 3774
	}	
	}	

FIRST RENEWED MOTION TO DISMISS OF COALITIONS FOR AMERICA, INC.

I. Introduction

Respondent Coalitions for America, Inc. ("CFA"), an insignificant and inconsequential Respondent in these proceedings, on April 17, 1997 moved to dismiss as to CFA. FEC has not acted upon the motion.

FEC began this MUR 3774 as to CFA by letter dated May 20, 1993, forwarding a 208-page package.[1] By letter dated March 6, 1995, FEC forwarded a supplemental 37-page package. CFA filed its Answer under date of July 12, 1993 and its Answer to Supplemental Complaint under date of March 27, 1995. Thus, these proceedings have been pending for more than four and one-half years, relating to events involving entities other than CFA which occurred, to the extent they occurred at all, in 1992. In view of the time lag, the needless cost to CFA and the inability of both

[1] Mostly a mishmash of speculative press clippings, with only scant and passing reference to CFA.

LAW OFFICES MARION EDWYN HARRISON
107 PARK WASHINGTON COURT
FALLS CHURCH, VIRGINIA 22046
TELEPHONE: 703 532-0303 / FACSIMILE: 703 532-0300

Complainant and FEC to link CFA to any unlawful activity, further FEC pursuit of CFA, however erratic and haphazard,[2] would constitute harassment.

The Complaint is filed by the Democratic Senatorial Campaign Committee ("DSCC") against the National Republican Senatorial Campaign Committee [sic] ("NRSC"), in what first was evidently, and now is clearly, part of a campaign, at this point ludicrously out of time, to set aside, or otherwise impugn, the election of Senator Paul R. Coverdell over former Senator Wyche Fowler, Jr., which occurred on November 24, 1992.[3]

The original Complaint more readily was recognizable as a political polemic than a proper pleading. CFA recklessly was named as a Respondent.

The Supplemental Complaint neither mentions, refers to nor alludes to CFA. It appears to relate to alleged NRSC activity involving the 1994 elections of Senators Rodney D. Grams of Minnesota and Rick Santorum in Pennsylvania.[4]

---

[2] More than 19 months after CFA's filing on July 12, 1993 of its Answer, CFA received, evidently filed on February 22, 1995, the Supplemental Complaint. More than five months thereafter, under date of August 1, 1995, FEC found probable cause. On August 7, 1995, FEC issued its [First] Subpoena to Produce Documents [and] Order to Submit Written Answers. More than five months thereafter, on February 2, 1996, FEC by letter enquired as to further information. More than 11 months thereafter, on February 20, 1997, FEC issued its [Second] Subpoena to Produce Documents [and] Order to Submit Written Answers. After litigating on the subject of enforceability, FEC deposed the President of Respondent CFA on September 25, 1997. The deposition produced no further material or relevant information.

[3] An action at law to set aside the election was unsuccessful. *Public Citizen, Inc. v. Miller*, 992 F2d. 1548 (11th Cir. 1993), 1993 WL 177197 (Jun 14 93).

[4] While the Supplemental Complaint does refer, expansively and somewhat ambiguously, to other organizations, it does not hint at CFA implication.

After more than four and one-half years of FEC on-again-off-again activity, it is time FEC ceased harassment of CFA.

II. Evidence Adduced as to CFA

As CFA pleaded in its Answer, CFA is qualified pursuant to 26 USC §501(c)(4) as among those

> . . . organizations not organized for profit but operated exclusively for the promotion of social welfare . . . and the net earnings of which are devoted exclusively to charitable [or] educational . . . purposes.

As such, CFA generally is precluded from utilizing its net earnings for, or in connection with, partisan political campaigns. Although CFA lawfully may engage in nonpartisan voter education and registration, Treas Reg §1.501(c)(4)-1(a)(2)(ii); Rev 81-95, 1981-1 CB322, it is established CFA does not do so. Licht Affidavit, *Attachment One* to Answer of Coalitions for America. CFA also would be allowed under certain circumstances involvement in political activity, *Faucher v FEC*, 743 F Supp 64 (Maine, 1990), aff'd 982 F 2d 468 (1st Cir. 1991); *FEC v National Organizations for Women*, 713 F Supp 428 (D.C., 1989). However, it is clear CFA does not so involve itself. Licht Affidavit, ibid.

Further facts are set forth in the Answer, at 4-13.

The entire "case" as to CFA is simple and self-exonerative.

In 1992 CFA received donations from NRSC. CFA made a handful of grants, all lawful and all timely reported to IRS. Two of the grants are to the League of Catholic Voters ("League"), one made well before a NRSC donation, the other made afterward. CFA also made two grants to the National Right to Work Committee ("NRTWC"). The grants to the League related to a New England referendum, having no connection with the Georgia, or any other, federal election. The two grants to NRTWC were nonspecific. The League and NRTWC are not-for-profit entities which themselves do not participate in political campaigns.

In sum, CFA, treating all donations fungibly, made grants, both before and after receipt of donations from NRSC, to two not-for-profit entities, one for a purpose unrelated to a federal election and the other as a general or nonspecific grant; indulged no political activity; and neither has acted in a manner to trigger FEC jurisdiction nor has violated any statute or regulation.

CFA lawfully may accept donations from any individual or entity other than a corporation qualified under 26 USC §501(c)(3). CFA, in support of its corporate purpose, lawfully may make grants to any individual or entity other than a contribution to an election.

It is ironic that, but for the patently political filing of the Complaint, FEC would not have so much as threshold jurisdiction over CFA. *2 USC §437g*; *FEC v Machinists Non-Partisan Political League*, 655 F 2d 380, 387-388 (D.C. Cir. 1981), cert denied 454 U.S. 897.

In 13 pages of the FEC Factual and Legal Analysis ("Analysis"), said to pertain to CFA, and offered to justify a *reason to believe* finding that CFA violated 2 USC §441b, CFA scarcely is

mentioned. At page 8, the Analysis mentions that NRSC donated money to CFA. At the time the authors may not have known how CFA, treating its funds fungibly, spent its funds, but they know now: CFA spent its funds, as it often does, as grants to like-minded not-for-profit nonpolitical entities. At page 10, the Analysis runs rampant in speculation but the evidence is wholly contrary to the speculation -- namely, CFA spent its money lawfully and nonpolitically.

At page 11, the Analysis is worded in accusatory fashion[5] where there is no misdeed. IRS Form 990 tells it all, as has CFA.

At page 12, the speculation becomes more fanciful, speculating that CFA "may have given CFA funds . . . in violation of 2 USC §441b" and, hence, NRSC may have transgressed, under the coordinated expenditures rule, §441a(d) Limitations.

The speculation does not stop there:

> If the NRSC made payments to the CFA in violation of 2 U.S.C. §§ 441a(d) and 441b, the spending of NRSC's funds necessarily has implications for CFA. If CFA accepted payments from the NRSC which constituted coordinated expenditures and used them to influence the Georgia run-off election, CFA would have effectively coordinated its activities with the candidates, through NRSC, and benefited both the NRSC and the Senate candidate whose race was targeted. As CFA is a corporation, any expenditures made by CFA may have constituted prohibited in-kind corporate contributions to the NRSC, the candidates or both.

---

[5] E.g., CFA "*admits* to receiving the payments. . ."; "CFA's President . . . *acknowledges* accepting . . ." [Emphasis supplied.]

But the irrefutable evidence is just the opposite. CFA made grants only to not-for-profit nonpolitical entities to which, as an entity qualified under 26 USC §501(c)(4), CFA fully is qualified to make grants.

III. FEC Effectively Is Time-Barred

Regardless of what transpires in *Democratic Senatorial Campaign Committee ("DSCC") v Federal Election Commission*, Civil Action #95-349(JHG), (April 17, 1996) ("*DSCC I*"); *Democratic Senatorial Campaign Committee v Federal Election Commission*, Civil Action #96-2185(JHG) (May 30, 1997) ("*DSCC II*"), and *Democratic Senatorial Campaign Committee v National Republican Senatorial Committee*, Civil Action #1:97CV01493(JHG), ("*DSCC III*"), FEC cannot conclude within the statute of limitations the relatively insignificant of FEC MUR 3774 which relates to CFA.

The alleged CFA transgression occurred on October 20 and 21 and November 12, 1992 -- more than five years past. Hence, the statute of limitations has run. 28 USC §2452; *FEC v Williams,* 65 USLW 2444, 104 F.3d 237 (9th Cir. 1996) cert. den. ____ S.Ct. _____, 1997 WL 629648, 66 USLW 3297 (U.S., Dec 08, 1997), #97-601.

FEC is time-barred from assessment of a civil penalty. Arguably, although one need not reach the argument in these proceedings, because FEC has injunctive power, FEC could enjoin Respondent. However, there would be nothing to enjoin, inasmuch as one of CFA's grantees, the League of Catholic Voters, about which FEC manifests no interest in any event, ceases to exist; and

the other, The National Right To Work Committee, Inc. ("NRTWC"), is not a political committee, is not under FEC jurisdiction and is a 26 USC §501(c)(4) entity as to a grant to which FEC could not enjoin CFA.

IV. Conclusion

As should have been obvious since May 1993, the CFA story is simple and noninculpatory. CFA received donations from NRSC. CFA made grants to not-for-profit nonpolitical entities, to one for a specific New England issues referendum, to the other for general fungibility.

CFA has participated in no campaign, directly or indirectly. CFA would have jeopardized its 26 USC §501(c)(4) eligibility were it to have made contributions or endorsements in a political campaign and obviously has not done so.

Whatever the merits, if any, of the Complaint against NRSC unrelated to CFA, FEC should have dismissed CFA from MUR 3774 at the threshold; should not have found *reason to believe* predicated upon wild, and now contradicted, speculation; and at this point, into the sixth year of harassment of CFA, forthwith should dismiss CFA.[6]

Meantime, while FEC has diverted its resources and delayed its proceedings, the limitations bar, if ever the slightest hazy, has become indisputably clear. *Williams, op cit.* The five-year statute of limitations has run, as Respondent CFA for more than one year has been predicting it would run.

---

[6] Unfortunately FEC is not obligated to comply with Rule 11, by the application of the equivalent of which this matter never would have achieved a life of its own. FR Civ P 11.

Failure forthwith to dismiss would be a mockery of the administrative regulatory process.

MARION EDWYN HARRISON
LAW OFFICES MARION EDWYN HARRISON
107 Park Washington Court
Fall Church, Virginia 22046
703 532-0303 Telephone
703 532-0300 Facsimile
Counsel for Coalitions for America

December 31, 1997